



General Assembly

Substitute Bill No. 1037

January Session, 2001

***AN ACT CONCERNING MEDIATION OF APPEALS OF DECISIONS OF
PLANNING AND ZONING COMMISSIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 8-8 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) As used in this section:

4 (1) "Aggrieved person" means a person aggrieved by a decision of a
5 board and includes any officer, department, board or bureau of the
6 municipality charged with enforcement of any order, requirement or
7 decision of the board. In the case of a decision by a zoning commission,
8 planning commission, combined planning and zoning commission or
9 zoning board of appeals, "aggrieved person" includes any person
10 owning land that abuts or is within a radius of one hundred feet of any
11 portion of the land involved in the decision of the board.

12 (2) "Board" means a municipal zoning commission, planning
13 commission, combined planning and zoning commission, zoning
14 board of appeals or other board or commission the decision of which
15 may be appealed pursuant to this section, or the chief elected official of
16 a municipality, or [his] a designee, in a hearing held pursuant to
17 section 22a-250, whose decision may be appealed.

18 (b) Except as provided in subsections (c), (d) and [(q)] (r) of this

19 section and sections 7-147 and 7-147i, any person aggrieved by any
20 decision of a board may take an appeal to the superior court for the
21 judicial district in which the municipality is located. The appeal shall
22 be commenced by service of process in accordance with subsections
23 [(e)] (f) and [(f)] (g) of this section within fifteen days from the date that
24 notice of the decision was published as required by the general
25 statutes. The appeal shall be returned to court in the same manner and
26 within the same period of time as prescribed for civil actions brought
27 to that court.

28 (c) In those situations where the approval of a planning commission
29 must be inferred because of the failure of the commission to act on an
30 application, any aggrieved person may appeal under this section. The
31 appeal shall be taken within twenty days after the expiration of the
32 period prescribed in section 8-26d for action by the commission.

33 (d) Any person affected by an action of a planning commission
34 taken under section 8-29 may appeal under this section. The appeal
35 shall be taken within thirty days after notice to [him] such person of
36 the adoption of a survey, map or plan or the assessment of benefits or
37 damages.

38 (e) The proceedings of the court for an appeal shall be stayed until
39 conclusion of the mediation process established pursuant to section 2
40 of this act.

41 [(e)] (f) Service of legal process for an appeal under this section shall
42 be directed to a proper officer and shall be made by leaving a true and
43 attested copy of the process with, or at the usual place of abode of, the
44 chairman or clerk of the board, and by leaving a true and attested copy
45 with the clerk of the municipality. Service on the chairman or clerk of
46 the board and on the clerk of the municipality shall be for the purpose
47 of providing legal notice of the appeal to the board and shall not
48 thereby make the chairman or clerk of the board or the clerk of the
49 municipality a necessary party to the appeal.

50 [(f)] (g) Service of process shall also be made on each person who

51 petitioned the board in the proceeding, provided [his] such person's
52 legal rights, duties or privileges were determined therein. However,
53 failure to make service within fifteen days on parties other than the
54 board shall not deprive the court of jurisdiction over the appeal. If
55 service is not made within fifteen days on a party in the proceeding
56 before the board, the court, on motion of the party or the appellant,
57 shall make such orders of notice of the appeal as are reasonably
58 calculated to notify the party not yet served. If the failure to make
59 service causes prejudice to the board or any party, the court, after
60 hearing, may dismiss the appeal or may make such other orders as are
61 necessary to protect the party prejudiced.

62 [(g)] (h) The appeal shall state the reasons on which it has been
63 predicated and shall not stay proceedings on the decision appealed
64 from. However, the court to which the appeal is returnable may grant
65 a restraining order, on application, and after notice to the board and
66 cause shown.

67 [(h)] (i) Within thirty days after the return date to court, or within
68 any further time the court allows, the board shall transmit the record
69 to the court. The record shall include, without limitation, (1) the
70 original papers acted on by the board and appealed from, or certified
71 copies thereof, (2) a copy of the transcript of the stenographic or sound
72 recording prepared in accordance with section 8-7a, and (3) the written
73 decision of the board including the reasons therefor and a statement of
74 any conditions imposed. If the board does not provide a transcript of
75 the stenographic or the sound recording of a meeting where the board
76 deliberates or makes a decision on a petition, application or request on
77 which a public hearing was held, a certified, true and accurate
78 transcript of a stenographic or sound recording of the meeting
79 prepared by or on behalf of the applicant or any other party shall be
80 admissible as part of the record. By stipulation of all parties to the
81 appeal, the record may be shortened. A party unreasonably refusing to
82 stipulate to limit the record may be taxed by the court for additional
83 costs. The court may require or permit subsequent corrections or
84 additions to the record.

85 [(i)] (j) Any defendant may, at any time after the return date of the
86 appeal, make a motion to dismiss the appeal. If the basis of the motion
87 is a claim that the appellant lacks standing to appeal, the appellant
88 shall have the burden of proving [his] such appellant's standing. The
89 court may, on the record, grant or deny the motion. The court's order
90 on the motion may be appealed in the manner provided in subsection
91 [(n)] (o) of this section.

92 [(j)] (k) The court shall review the proceedings of the board and
93 shall allow any party to introduce evidence in addition to the contents
94 of the record if (1) the record does not contain a complete transcript of
95 the entire proceedings before the board, including all evidence
96 presented to it, pursuant to section 8-7a, or (2) it appears to the court
97 that additional testimony is necessary for the equitable disposition of
98 the appeal. The court may take the evidence or may appoint a referee
99 or committee to take such evidence as it directs and report the same to
100 the court, with [his] the referee's or its findings of facts and conclusions
101 of law. Any report of a referee, [or] committee or mediator under
102 subsection (f) of section 2 of this act shall constitute a part of the
103 proceedings on which the determination of the court shall be made.

104 [(k)] (l) The court, after a hearing thereon, may reverse or affirm,
105 wholly or partly, or may modify or revise the decision appealed from.
106 If a particular board action is required by law, the court, on sustaining
107 the appeal, may render a judgment that modifies the board decision or
108 orders the particular board action. In an appeal from an action of a
109 planning commission taken under section 8-29, the court may also
110 reassess any damages or benefits awarded by the commission. Costs
111 shall be allowed against the board if the decision appealed from is
112 reversed, affirmed in part, modified or revised.

113 [(l)] (m) Appeals from decisions of the board shall be privileged
114 cases and shall be heard as soon as is practicable unless cause is shown
115 to the contrary.

116 [(m)] (n) No appeal taken under subsection (b) of this section shall

117 be withdrawn and no settlement between the parties to any such
118 appeal shall be effective unless and until a hearing has been held
119 before the Superior Court and such court has approved such proposed
120 withdrawal or settlement.

121 ~~[(n)]~~ (o) There shall be no right to further review except to the
122 Appellate Court by certification for review, on the vote of two judges
123 of the Appellate Court so to certify and under such other rules as the
124 judges of the Appellate Court establish. The procedure on appeal to
125 the Appellate Court shall, except as otherwise provided herein, be in
126 accordance with the procedures provided by rule or law for the appeal
127 of judgments rendered by the Superior Court unless modified by rule
128 of the judges of the Appellate Court.

129 ~~[(o)]~~ (p) The right of a person to appeal a decision of a board to the
130 Superior Court, and the procedure prescribed in this section, shall be
131 liberally interpreted in any case where a strict adherence to these
132 provisions would work surprise or injustice. The appeal shall be
133 considered to be a civil action and, except as otherwise required by this
134 section or the rules of the Superior Court, pleadings may be filed,
135 amended or corrected, and parties may be summoned, substituted or
136 otherwise joined, as provided by the general statutes.

137 ~~[(p)]~~ (q) If any appeal has failed to be heard on its merits because of
138 insufficient service or return of the legal process due to unavoidable
139 accident or the default or neglect of the officer to whom it was
140 committed, or the appeal has been otherwise avoided for any matter of
141 form, the appellant shall be allowed an additional fifteen days from
142 determination of that defect to properly take the appeal. The
143 provisions of section 52-592 shall not apply to appeals taken under this
144 section.

145 ~~[(q)]~~ (r) In any case in which a board fails to comply with a
146 requirement of a general or special law, ordinance or regulation
147 governing the content, giving, mailing, publishing, filing or recording
148 of any notice either of a hearing or of an action taken by the board, any

149 appeal or action by an aggrieved person to set aside the decision or
150 action taken by the board on the grounds of such noncompliance shall
151 be taken within two years of the date of that decision or action.

152 Sec. 2. (NEW) (a) As used in this section, "mediation" means the
153 process where the parties in an appeal filed under section 8-8 of the
154 general statutes, as amended by this act, meet with an impartial third
155 party to work toward resolution of the issues in the decision that was
156 the subject of the appeal in accordance with the principles of mediation
157 commonly used in labor management disputes and other mediation
158 programs set forth in the general statutes.

159 (b) The parties to an appeal under section 8-8 of the general statutes,
160 as amended by this act, shall consider whether the issues may be
161 resolved through mediation for not more than forty-five days after the
162 filing of the appeal. Not more than five days after the conclusion of the
163 time for consideration, the parties shall file a statement with the
164 Superior Court requesting either that the action be resolved by
165 mediation or that court proceedings be resumed. The statement shall
166 include reasons for the selection. Mediation shall take place with the
167 consent of each party.

168 (c) Mediation shall begin on the date the statement is filed under
169 subsection (b) of this section and conclude not more than one hundred
170 eighty days after such filing. Such period may be extended for an
171 additional one hundred eighty days upon mutual agreement of the
172 parties. A party may submit a petition to the court requesting another
173 extension or stating why no other extension should be granted. The
174 court, in its discretion, may extend the time for mediation after the
175 second period.

176 (d) The contents of mediating sessions shall not be admissible as
177 evidence. A mediator shall not act as or be summoned as a witness in a
178 court proceeding on an appeal if mediation has not resolved the issues
179 of the appeal.

180 (e) A mediator may require the participation in mediation of any

181 person deemed by the mediator necessary for effective resolution of
182 the issues, including representatives of governmental agencies,
183 abutting property owners, intervenors or other persons significantly
184 involved in the decision being appealed.

185 (f) Not more than fifteen days after the conclusion of mediation, the
186 mediators shall file a report with the Superior Court describing the
187 proceedings and specifying the issues resolved. If no resolution is
188 made, the mediators shall file a report with the court indicating the
189 reasons for the failure to resolve the issues and stating the terms of any
190 agreement that may have been reached.

191 (g) The cost of mediation shall be distributed equally among the
192 parties.

193 Sec. 3. Section 22a-43 of the general statutes is repealed and the
194 following is substituted in lieu thereof:

195 (a) The commissioner or any person aggrieved by any regulation,
196 order, decision or action made pursuant to sections 22a-36 to 22a-45,
197 inclusive, by the commissioner, district or municipality or any person
198 owning or occupying land which abuts any portion of land or is within
199 a radius of ninety feet of the wetland or watercourse involved in any
200 regulation, order, decision or action made pursuant to said sections
201 may, within the time specified in subsection (b) of section 8-8, as
202 amended by this act, from the publication of such regulation, order,
203 decision or action, appeal to the superior court for the judicial district
204 where the land affected is located, and if located in more than one
205 judicial district to the court in any such judicial district. Such appeal
206 shall be made returnable to said court in the same manner as that
207 prescribed for civil actions brought to said court, except that the record
208 shall be transmitted to the court within the time specified in subsection
209 [(h)] (i) of section 8-8, as amended by this act. If the inland wetlands
210 agency or its agent does not provide a transcript of the stenographic or
211 the sound recording of a meeting where the inland wetlands agency or
212 its agent deliberates or makes a decision on a permit for which a public

213 hearing was held, a certified, true and accurate transcript of a
214 stenographic or sound recording of the meeting prepared by or on
215 behalf of the applicant or any other party shall be admissible as part of
216 the record. Notice of such appeal shall be served upon the inland
217 wetlands agency and the commissioner. The commissioner may
218 appear as a party to any action brought by any other person within
219 thirty days from the date such appeal is returned to the court. The
220 appeal shall state the reasons upon which it is predicated and shall not
221 stay proceedings on the regulation, order, decision or action, but the
222 court may on application and after notice grant a restraining order.
223 Such appeal shall have precedence in the order of trial.

224 (b) The court, upon the motion of the person who applied for such
225 order, decision or action, shall make such person a party defendant in
226 the appeal. Such defendant may, at any time after the return date of
227 such appeal, make a motion to dismiss the appeal. At the hearing on
228 such motion to dismiss, each appellant shall have the burden of
229 proving [his] such appellant's standing to bring the appeal. The court
230 may, upon the record, grant or deny the motion. The court's order on
231 such motion may be appealed in the manner provided in subsection
232 [(o)] (p) of section 8-8, as amended by this act.

233 (c) No appeal taken under subsection (a) of this section shall be
234 withdrawn and no settlement between the parties to any such appeal
235 shall be effective unless and until a hearing has been held before the
236 Superior Court and said court has approved such proposed
237 withdrawal or settlement.

238 (d) There shall be no right to further review except to the Appellate
239 Court by certification for review in accordance with the provisions of
240 subsection [(o)] (p) of section 8-8, as amended by this act.

Statement of Legislative Commissioners:

Changes were made in section 1 for gender neutrality.

PD

JOINT FAVORABLE SUBST. C/R

JUD